

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 15, 2011

AMENDED IN ASSEMBLY APRIL 5, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Portantino

February 15, 2011

An act to amend Section 120990 of, ~~and to add Section 120889 to,~~
the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL’S DIGEST

AB 491, as amended, Portantino. HIV testing.

Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, administration of a program to provide information, establish testing sites, and award contracts for AIDS early intervention projects to provide appropriate medical treatment to prevent or delay the progression of disease that results from HIV infection, to coordinate related services, and to provide information and education to prevent the spread of the infection to others. Existing law sets forth the powers and duties of an HIV counselor in a project HIV counseling and testing site funded by the department through a local health jurisdiction or its agents.

~~This bill would require the department to, upon appropriation by the Legislature, allocate state and federal funds that are intended to be used to test persons for HIV to a local health jurisdiction in accordance with the prevalence of HIV and AIDS in the local jurisdiction.~~

Existing law requires a medical care provider, prior to ordering an HIV test, to provide information about the test to the patient, ~~to inform~~

the patient that there are numerous treatment options available, ~~and to~~ inform the patient that a person who tests negative for HIV should continue to be routinely tested, *and obtain informed consent, as specified.*

~~This bill would specify that an HIV counselor is a medical care provider for the purposes of related provisions. The bill would make related changes.~~ *revise the requirements for the provision of information to, and obtaining the informed consent of, a patient in connection with HIV testing.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all the
- 2 following:
- 3 (a) HIV testing has entered a new era as policymakers have
- 4 begun to understand that ensuring that more people know their
- 5 HIV status is critical to maintaining health and reducing the spread
- 6 of the virus. A person's awareness of his or her HIV status leads
- 7 to treatment, better survival rates, and preventing transmission.
- 8 (b) The California Office of AIDS estimates that up to 39,000
- 9 Californians have HIV and do not know it. People who do not
- 10 know their HIV status do not begin life-prolonging treatments,
- 11 and they continue to expose others to HIV through unprotected
- 12 risk behaviors.
- 13 (c) Research shows that when people learn they are infected
- 14 with HIV, they take steps to protect their health and the health of
- 15 their partners. In a 2005 meta-analysis of sexual behaviors, persons
- 16 who knew their HIV status were 68 percent less likely to engage
- 17 in unprotected intercourse with uninfected partners.
- 18 (d) According to the federal Centers for Disease Control and
- 19 Prevention, cohort studies have demonstrated that HIV-infected
- 20 persons who are unaware of their infection do not reduce risk
- 21 behaviors. Persons tested for HIV who do not return for test results
- 22 might even increase their risk for transmitting HIV to partners.
- 23 (e) Additionally, the earlier a person is diagnosed, the sooner
- 24 he or she can access medical care and other prevention services
- 25 to further prevent transmission and disease progression.

1 (f) Because medical treatment that lowers HIV viral load might
2 also reduce risk for transmission to others, early referral to medical
3 care could prevent HIV transmission in communities while
4 reducing a person's risk for HIV-related illness and death.

5 (g) For all of these reasons, routine HIV testing is essential to
6 any comprehensive HIV prevention program.

7 (h) With an eye toward making HIV testing more routine, the
8 federal government has adopted a national goal of six million HIV
9 tests each year.

10 (i) It is the intent of the Legislature that the State of California
11 accomplish both of the following:

12 (1) Make every effort to ensure that HIV testing is routinely
13 available in physicians' offices, hospitals, clinics, and every other
14 public and private medical and nonmedical setting in which HIV
15 testing is administered.

16 (2) Fulfill its fair share of the national testing goal by seeking
17 to test 550,000 Californians each year.

18 ~~SEC. 2. Section 120889 is added to the Health and Safety Code,~~
19 ~~to read:~~

20 ~~120889. The department shall, upon appropriation by the~~
21 ~~Legislature, allocate state and federal funds that are intended to~~
22 ~~be used to test persons for HIV to a local health jurisdiction in~~
23 ~~accordance with the prevalence of HIV and AIDS in the jurisdiction~~
24 ~~at the time of the allocation decision.~~

25 ~~SEC. 3.~~

26 ~~SEC. 2.~~ Section 120990 of the Health and Safety Code is
27 amended to read:

28 120990. (a) Prior to ordering a test that identifies infection
29 with HIV, a medical care provider shall inform the patient that the
30 test is planned, provide information about the test, inform the
31 patient that there are numerous treatment options available for a
32 patient who tests positive for HIV and that a person who tests
33 negative for HIV should continue to be routinely tested, and advise
34 the patient that he or she has the right to decline the test. If a patient
35 declines the test, the medical care provider shall note that fact in
36 the patient's medical file. For the purposes of this subdivision, "a
37 medical care provider" includes, but is not limited to, a person
38 who is authorized to administer an HIV test pursuant to Section
39 120917. This subdivision shall apply to testing in a clinical or
40 nonclinical setting, provided that the test performed in a nonclinical

1 setting is classified as waived under the federal Clinical Laboratory
2 Improvement Act (CLIA) (42 U.S.C. Sec. 263a).

3 (b) ~~Subdivision (a) shall not apply when a person independently~~
4 ~~requests an HIV test from the provider.~~

5 (e) ~~Except as provided in subdivision (a), no person shall~~
6 ~~administer an HIV antibody test unless the person being tested or~~
7 ~~his or her parent, guardian, conservator, or other person specified~~
8 ~~in Section 121020, signs a written statement documenting the~~
9 ~~person's informed consent to the test, or an HIV counselor who is~~
10 ~~authorized to administer an HIV test pursuant to Section 120917~~
11 ~~shall obtain the informed consent of the person being tested, as~~
12 ~~defined by the federal Centers for Disease Control and Prevention,~~
13 ~~and provide information regarding HIV, the risks and benefits of~~
14 ~~testing, the implications of HIV test results, and how test results~~
15 ~~will be communicated. The medical care provider or HIV counselor~~
16 ~~shall provide the opportunity to ask questions and advise the person~~
17 ~~being tested that he or she has the right to decline the test. If a~~
18 ~~person declines the test, the medical care provider or HIV~~
19 ~~counselor shall document that fact.~~

20 (b) *This subdivision shall apply to testing in clinical and*
21 *nonclinical settings, provided that the test performed in a*
22 *nonclinical setting is classified as waived under the federal Clinical*
23 *Laboratory Improvement Act (CLIA) (42 U.S.C. Sec. 263a).*

24 (c) *A separate written consent form for obtaining informed*
25 *consent for HIV testing is not required. This informed consent for*
26 *HIV testing may be obtained orally. Nothing in this section shall*
27 *be construed to eliminate the need for general informed consent*
28 *for medical care in writing, where that written consent is otherwise*
29 *required by law. This requirement does not apply to a test*
30 *performed at an alternative site pursuant to Sections 120890 or*
31 *120895. Nothing in this section shall be construed to allow a person*
32 *to administer a test for HIV unless that person is otherwise*
33 *permitted under current law to administer an HIV test.*

34 (d) *For those patients who have positive test results for a test*
35 *that identifies infection with HIV, the medical care provider or*
36 *HIV counselor shall provide the person being tested with linkages*
37 *to care, and shall document that this information has been*
38 *provided. Linkages to care shall include providing information*
39 *orally or in writing about available treatment options and*
40 *voluntary partner notification services, and answering questions*

1 *that the patient may have. It shall also include providing the patient*
2 *with contact information for HIV medical care, and support and*
3 *social services, in writing.*

4 ~~(d)~~

5 (e) Nothing in this section shall preclude a medical examiner
6 or other physician from ordering or performing a test to detect
7 HIV on a cadaver when an autopsy is performed or body parts are
8 donated pursuant to the Uniform Anatomical Gift Act (Chapter
9 3.5 (commencing with Section 7150) of Part 1 of Division 7).

10 ~~(e)~~

11 (f) (1) The requirements of subdivision (c) do not apply when
12 blood is tested as part of a scientific investigation conducted either
13 by a medical researcher operating under the approval of an
14 institutional review board or by the department, in accordance with
15 a protocol for unlinked testing.

16 (2) For purposes of this subdivision, “unlinked testing” means
17 blood samples that are obtained anonymously, or that have the
18 name or identifying information of the individual who provided
19 the sample removed in a manner that prevents the test results from
20 ever being linked to a particular individual who participated in the
21 research or study.

22 ~~(f)~~

23 (g) Nothing in this section shall be construed to permit any
24 person to unlawfully disclose an individual’s HIV status, or to
25 otherwise violate provisions of Section 54 of the Civil Code, the
26 Americans With Disabilities Act of 1990 (Public Law 101-336),
27 or the California Fair Employment and Housing Act (Part 2.8
28 (commencing with Section 12900) of Division 3 of Title 2 of the
29 Government Code), which prohibit discrimination against
30 individuals who are living with HIV, or who test positive for HIV,
31 or are presumed to be HIV-positive.